

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

EFRAN VILLALOBOS-GONZALEZ,

Defendant.

CASE NO. CR15-0202-JCC

ORDER

This matter comes before the Court on Defendant's motion for compassionate release pursuant to 18 U.S.C. § 3582(C)(1) (Dkt. No. 357).¹ Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS the motion for the reasons explained herein.

I. BACKGROUND

On February 23, 2016, Defendant pleaded guilty to conspiracy to distribute controlled substances in violation of 21 U.S.C. §§ 841(a), 841(b)(1)(C), 846. (*See* Dkt. Nos. 169–71.) On May 24, 2016, the Court sentenced Defendant to 60 months of incarceration followed by three

¹ On June 29, 2020, Defendant filed a *pro se* motion for compassionate release. (Dkt. No. 350.) Counsel was subsequently appointed to Defendant, (Dkt. No. 351), and the parties stipulated to a briefing schedule under which Defendant would file an amended or substitute motion on or before July 17, 2020. (Dkt. Nos. 353 at 2, 354 at 1.) Defendant accordingly filed the instant motion for compassionate release. (*See* Dkt. No. 357 at 1.) The Court's order disposes of both Defendant's *pro se* motion and his counseled motion.

1 years of supervised release. (Dkt. Nos. 241–42.) Defendant’s scheduled release date is
 2 September 25, 2020. (*See* Dkt. Nos. 357 at 3, 359 at 2.)

3 Defendant now moves to reduce his custodial sentence to time served with the remainder
 4 of his sentence converted to home confinement, placement at a residential reentry center
 5 (“RRC”), or a combination of the two, pursuant to the compassionate release provisions of 18
 6 U.S.C. § 3582(c)(1). (*See* Dkt. No. 357 at 1.)² Defendant argues that he suffers from numerous
 7 ailments, including decompensating liver cirrhosis, that put him at increased risk of serious
 8 complications from COVID-19. (Dkt. Nos. 357 at 1, 3–5; *see generally* Dkt. No. 358.)³

9 **II. DISCUSSION**

10 **A. Legal Standard**

11 Before a defendant files a motion to reduce his sentence, a defendant must first ask the
 12 warden of the defendant’s facility to file a motion on the defendant’s behalf. 18 U.S.C.
 13 § 3582(c)(1)(A). If the warden denies the defendant’s request or the warden takes longer than 30
 14 days to respond, then the defendant may file his own motion to reduce his sentence. *Id.*

15 18 U.S.C. § 3582(c)(1)(A) allows a court to reduce a term of imprisonment if
 16 “extraordinary and compelling reasons warrant such a reduction” and “such a reduction is
 17 consistent with applicable policy statements issued by the Sentencing Commission.” The
 18 Sentencing Commission’s relevant policy statement, in turn, says that a court may reduce a term
 19 of imprisonment if “the defendant is not a danger to the safety of any other person or to the
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21 ² The Government and U.S. Probation note that Defendant “is a non-citizen subject to a
 22 valid immigration detainer, which precludes his release directly into the community or to a
 23 residential reentry center.” (Dkt. No. 359 at 2.) Defendant notes that several courts have found
 24 that a defendant who is subject to a valid immigration detainer may still be granted
 25 compassionate release. (*See* Dkt. No. 360 at 2–4) (collecting cases). Accordingly, the Court
 26 addresses Defendant’s request for compassionate release without regard to the possibility that he
 will be detained by U.S. Immigration and Customs Enforcement upon release.

³ Defendant notes that “FMC–Fort Worth experienced the largest outbreak in all of BOP
 in spite of [its] precautions, and is currently experiencing an uptick in such cases after
 weathering that outbreak.” (Dkt. No. 357 at 4.)

community” and “extraordinary and compelling reasons warrant such a reduction.” United States Sentencing Guidelines (“U.S.S.G.”) § 1B1.13. The policy statement also directs a court to consider the factors set forth in 18 U.S.C. § 3553(a) in deciding whether compassionate release is appropriate. U.S.S.G. § 1B1.13 cmt. n.4. Taken together, the policy statement and 18 U.S.C. § 3582(c)(1)(A) create a three-step process for ruling on a motion for compassionate release: the court must first decide whether “extraordinary and compelling reasons warrant . . . a reduction [in the defendant’s sentence],” then determine whether “the defendant is . . . a danger to the safety of any other person or to the community,” and finally assess whether a reduction in the defendant’s sentence is consistent with the factors set forth in 18 U.S.C. § 3553(a). *See* 18 U.S.C. § 3582(c)(1)(A); U.S.S.G. § 1B1.13.

B. Exhaustion

Defendant previously filed a request for compassionate release with the warden of the Federal Medical Center–Fort Worth, which was denied on May 26, 2020. (*See* Dkt. Nos. 357 at 3, 357-1 at 2–3.) The parties agree that Defendant has therefore satisfied the exhaustion requirement of the First Step Act. *See* 18 U.S.C. § 3582(c)(1)(A); (Dkt. Nos. 357 at 2, 359 at 8).

C. Extraordinary and Compelling Reasons for Release

A court may reduce a defendant’s sentence if it finds that extraordinary and compelling reasons exist, such as the defendant “suffering from a serious physical or medical condition . . . that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.” U.S.S.G. § 1B1.13 cmt. n.1(A)(ii)(I); *see* 18 U.S.C. § 3582(c)(1)(A).⁴

Here, Defendant suffers from several health ailments, including decompensating liver

⁴ While Defendant cites the “catch-all” provision of U.S.S.G. § 1B1.13, (*see* Dkt. No. 357 at 6 – 7) (citing U.S.S.G. § 1B1.13, cmt. n.1.D.), Defendant’s request falls within the medical condition provision of U.S.S.G. § 1B1.13 because his motion cites his medical conditions that render him particularly vulnerable to serious complications from COVID-19, *see* U.S.S.G. § 1B1.13, cmt. n.1.A.ii.

1 cirrhosis, thrombocytopenia, anemia, and cardiac murmur, and has a history of hepatitis and
2 diabetes. (*See* Dkt. Nos. 357 at 3–5, 359 at 4; *see generally* Dkt. No. 358.) The parties agree that
3 Defendant’s health issues put him at heightened risk of severe complications if he were to
4 contract COVID-19 and that therefore extraordinary and compelling reasons exist in this case.
5 (*See* Dkt. Nos. 357 at 6–8, 359 at 9.) The Court accordingly finds that Defendant has identified
6 extraordinary and compelling circumstances that justify a reduction in his sentence pursuant to
7 18 U.S.C. § 3582(c)(1)(A). *See, e.g., United States v. Cosgrove*, Case No. C15-0230-RSM, Dkt.
8 No. 95 at 11 (W.D. Wash. Apr. 15, 2020) (concluding inmate faced extraordinary and
9 compelling circumstances because he was uniquely susceptible to COVID-19 and he was housed
10 in a facility where the virus was spreading).

11 **D. Danger to the Safety of Any Other Person or to the Community**

12 In determining whether a defendant presents a danger to the safety of any other person or
13 to the community, the court looks to the nature and circumstances of the defendant’s underlying
14 offense, the weight of evidence against him, his history and characteristics, and the nature and
15 seriousness of the danger his release would pose to any person or the community. *See* U.S.S.G.
16 § 1B1.13(2); 18 U.S.C. § 3142(g).

17 Here, Defendant argues that “[h]is only prior criminal record was for DUIs, he spent a
18 year on appearance bond without incident while his case was pending, he has not disciplinary
19 history while he has been incarcerated, and his . . . underlying [criminal conduct] was largely the
20 product of the influence of a cousin who remains incarcerated.” (Dkt. No. 357 at 9.) Defendant
21 also argues that if he is released to the community he will benefit from family support in
22 Snohomish County and that if he is placed in an RRC he will be under constant supervision by
23 U.S. Probation. (*Id.*) The Government “concurs that the defendant poses a very modest danger to
24 others or the community,” emphasizing that Defendant’s noncompliance with his appearance
25 bond “entailed failures to submit to alcohol and drug testing” and that Defendant “largely acted
26 at the direction of others” in his underlying criminal conduct. On this record, the Court finds that

1 Defendant would not pose a danger to the safety of the community if released. *See* U.S.S.G.
2 § 1B1.13(2); 18 U.S.C. § 3142(g).

3 **E. 18 U.S.C. § 3553(a) Factors**

4 In determining whether to grant a defendant compassionate release under 18 U.S.C.
5 § 3582(c)(1)(A), the court must also consider any relevant factors set forth in 18 U.S.C.
6 § 3553(a). *See* U.S.S.G. § 1B1.13. These factors include the nature and circumstances of the
7 underlying offense, the need for the sentence imposed, the kinds of sentences available, the
8 applicable sentencing range, pertinent policy statements, avoidance of sentencing disparities, and
9 the need to provide victims with restitution. *See* 18 U.S.C. § 3553(a).

10 Defendant's underlying criminal conduct was serious, as he was involved in a large-scale
11 drug trafficking operation that was responsible for distributing substantial quantities of illicit
12 substances. (*See* Dkt. No. 359 at 2–3.) But, as recognized by the Government, Defendant
13 “largely acted at the direction of others.” (*Id.* at 11.) Moreover, Defendant is scheduled to be
14 released from confinement in September 2020. (*See* Dkt. Nos. 357 at 3; 359 at 1, 11.) Thus,
15 Defendant has served a substantial portion of his sentence and is seeking a minimal reduction.
16 Therefore, the Court finds that the factors set forth in 18 U.S.C. § 3553(a) weigh in favor of
17 granting Defendant's request for compassionate release. *See* U.S.S.G. § 1B1.13.

18 **F. Additional Term of Supervised Release**

19 While 18 U.S.C. § 3582(c)(1)(A) authorizes a court to reduce a defendant's term of
20 imprisonment, the statute allows a court to “impose a term of probation or supervised release
21 with or without conditions that does not exceed the unserved portion of the original term of
22 imprisonment.” The Court finds that an additional term of supervised release would adequately
23 balance the seriousness of Defendant's offense and the need for his original sentence with the
24 extraordinary and compelling reasons that warrant his release. Therefore, the Court IMPOSES an
25 additional term of supervised release commensurate with the balance of Defendant's remaining
26 term of imprisonment as of the date this order is issued. During this term of supervised release,

1 Defendant shall reside in and satisfactorily participate in an RRC program as a condition of
2 supervised release until discharged by the Program Manager or Defendant's U.S. Probation
3 officer. Defendant may be responsible for a 25% gross income subsistence fee. This additional
4 term of supervised release shall be followed by the previously imposed three years of supervised
5 release.

6 **G. Motion to Seal**

7 In support of his motion for compassionate release, Defendant filed his medical records
8 under seal "in accordance with LCrR 55." (*See* Dkt. No. 358.) But that Local Criminal Rule does
9 not state that medical records shall be filed under seal. *See* W.D. Wash. Local Crim. R. 55(b).
10 Moreover, even if a record qualifies for protection under Local Criminal Rule 55(b), "a motion
11 or stipulated motion to seal must be made or filed before or at the same time the party files the
12 sealed materials." W.D. Wash. Local Crim. R. 55(c). Therefore, Defendant is ORDERED to file
13 an appropriate motion to seal setting forth the legal basis for maintaining the exhibit under seal
14 within 14 days of the date this order is issued. Failure to do so will result in the unsealing of the
15 exhibit.

16 **III. CONCLUSION**

17 For the foregoing reasons, the Court GRANTS Defendant's motion for compassionate
18 release (Dkt. No. 357). The Court hereby REDUCES Defendant's term of imprisonment to time
19 served. The Court also IMPOSES an additional term of supervised release commensurate with
20 the balance of Defendant's remaining term of imprisonment as of the date this order is issued,
21 subject to the terms set forth in this order, to be followed by the previously imposed period of
22 three years of supervised release. The Court accordingly ORDERS that Defendant be released to
23 an appropriate RRC program in the Western District of Washington within 24 hours.

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1 DATED this 7th day of August 2020.

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5 John C. Coughenour
6 UNITED STATES DISTRICT JUDGE
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